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7 UNITED STATES DISTRICT COURT  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 ROBERT T. BROCKMAN,  
15 Defendant.

No. CR 20-00371 WHA

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28 **ORDER GRANTING RULE 21(b) MOTION  
TO TRANSFER, DENYING MOTION TO  
DISMISS IN PART FOR LACK OF VENUE,  
AND ORDERING IMMEDIATE  
TRANSFER OF ENTIRE CRIMINAL  
ACTION TO THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF TEXAS**

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## INTRODUCTION

In this prosecution for tax evasion, FBAR violations, conspiracy, wire fraud, money laundering, and destruction of and tampering with evidence, this order **TRANSFERS** the entire criminal matter to the United States District Court for the Southern District of Texas.

## STATEMENT

Defendant Robert Brockman allegedly invested more than a billion dollars through Vista Equity Partners and sequestered his billions in capital gains abroad to evade taxation. The indictment outlines an elaborate scheme, wide-ranging in both time and place (Ind. ¶ 36–38).

Since 1999, Brockman earned interest through his investments with Vista, a firm with an office in the Northern District of California. He stands accused of concealing those capital gains

from the IRS by directing his earnings into other financial entities, real property, and accounts, many abroad. The prosecutors include three with the Tax Division (in Washington, D.C.) and one AUSA based in this district. Contrary to its written policy of prosecuting tax-evasion cases where the alleged evader lives (for deterrence purposes), the government presented this case to a grand jury in San Francisco, rather than Houston where Brockman has long resided. In October 2020, the San Francisco grand jury returned an indictment charging that Brockman failed to report his capital gains in his returns for tax years 2012–2018; engaged in a twenty-year conspiracy to defraud the United States and evade taxes; willfully failed to file Reports of Foreign Bank and Financial Accounts (FBARs) to the IRS 2013–2018; committed wire fraud affecting a financial institution (Deutsche Bank); and laundered money, primarily by direction to his nominees. These were, most notably, three people with monikers “Individual One,” “Individual Two,” and “Individual Three.” Finally, in June 2016, Brockman is said to have learned of the government’s investigation into his actions and he (or his nominees at his direction) destroyed, altered, corrupted, or tampered with evidence relevant to the grand jury investigation.

Brockman is 79 and resides in Houston, Texas. He has never lived in this district. His health now declines. In late 2018, Brockman underwent testing for abnormal cognitive and physical symptoms. In a declaration filed in support of the instant motion, Brockman’s treating physician calls his symptoms “consistent with” one of three conditions, or a combination thereof: (1) Parkinson’s disease, (2) Parkinsonism (a condition causing physical tremors), and (3) Lewy body dementia (a condition in which protein deposits in nerve cells cause dementia and impair movement) (Keneally Decl. ¶ 10, Pool Decl. ¶¶ 5–7, 9–10).

A grand jury indicted Brockman in October 2020:

- Count 1: Conspiracy to defraud the United States and commit tax evasion, in violation of 18 U.S.C. § 371;
- Counts 2 through 8: Tax evasion, in violation of 26 U.S.C. § 7201;
- Counts 9 through 14: Violation of Reports of Foreign Bank and Financial Accounts (FBAR) filing requirements, in violation of 31 U.S.C. §§ 5314 and 5322;

- Counts 15–34: Wire fraud affecting a financial institution, in violation of 18 U.S.C. § 1343;
  - Counts 35–37: Concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i), tax evasion money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(ii), and international concealment money laundering, in violation of 18 U.S.C. § 1956(a)(2)(B)(i);
  - Counts 38–39: Evidence tampering and destruction of evidence in violation of 18 U.S.C §§ 1512(b)(2)(B) and 1512(c)(1); and
  - Forfeiture allegations, in violation of 18 U.S.C. §§ 982(a)(1) and 982(a)(2)(A), and 28 U.S.C. § 2461(c).

In November 2020, Brockman moved to change venue on the tax-evasion counts pursuant to 18 U.S.C. § 3237(b). He renews that motion here, but an order herein has since denied it (Dkt. 53). He now also moves to dismiss or transfer the FBAR counts and to transfer the entire matter to the Southern District of Texas. Since filing this motion, Brockman has moved for a competency evaluation. This order on the motion to change venue and dismiss or transfer FBAR counts follows full briefing and oral argument.

## ANALYSIS

## 1. VENUE.

In the instant motion, Brockman challenges venue on two grounds. *First*, he argues that under 18 U.S.C. § 3237(b) and Rule 7(c)(1) and (f), the tax-evasion charges should be transferred to the Southern District of Texas. Section 3237(b) enables a defendant to “elect” prosecution in his home district if the basis for venue elsewhere “solely” relies on a defendant’s mailing of the tax return into the district. Brockman had previously moved under Section 3237(b) and Rule 7. That motion was denied (Dkt. 53). For the same reasons, the motion to change venue under Section 3237(b) and Rule 7 is **DENIED**.

*Second*, Brockman challenges venue for the FBAR violations and contends that the government indicted him on those counts in the wrong district. A substantial unresolved question remains as to whether venue lies in this district for the FBAR counts. The government

1 posits that it can prosecute FBAR charges anywhere a person can submit an FBAR online. The  
2 defense views venue as proper in either the Southern District of Texas or the district in which the  
3 FBARs are centrally received, the Northern District of Virginia.

4 The prosecution cites two out-of-circuit decisions addressing venue for FBAR  
5 prosecutions: *United States v. Clines*, 958 F.2d 578 (4th Cir. 1992), and *United States v.*  
6 *Bradley*, 644 F.3d 1213 (11th Cir. 2011). *Clines* held that venue lies in the defendant's home  
7 district, the district containing the central receiving center for the FBAR, or any district where  
8 individuals could file FBARs. See 958 F.2d at 583. *Bradley*, too, held that venue for an FBAR  
9 prosecution could lie anywhere that one could file FBARs (at that time, any local IRS office).  
10 See 644 F.3d at 1252.

11 Those decisions predate 2013, however, when the IRS ceased to allow FBAR filing at local  
12 IRS offices and required them to be filed online *only*. Therefore, *Bradley* and *Clines* are  
13 distinguishable. Our court of appeals has not addressed venue for FBAR counts but did tackle a  
14 similar question in *United States v. Clinton*, 574 F.2d 464 (9th Cir. 1978), with respect to a  
15 criminal failure to file tax returns. The decision held that venue for failing to file tax returns  
16 attaches "at the defendant's place of residence, or at the collection point where the return should  
17 have been filed." *Id.* at 465. The decision held that prosecution in the Western District of  
18 Washington, which contained Washington's tax "collection center" (but where the defendant did  
19 not reside) met venue requirements. Since Clinton could have filed his return at the collection  
20 center, venue was proper there.

21 Brockman stands accused of failing to file FBARs, annually, each year from 2013 through  
22 2018, so the earlier IRS rules governing their place of filing do not apply here. Both sides here  
23 seem to agree that the central collection point for FBAR filings sits in Virginia and that  
24 Brockman lives in Houston. In light of *Clinton* and the IRS rule change that eliminates the  
25 foundation of *Bradley* and *Clines*, it seems doubtful that the government's position could carry  
26 the day on this point. The stronger authority from our court of appeals thus favors the defense.

27 The government argues, alternatively, that venue is proper as to the FBAR counts because  
28 the indictment also charges a specific FBAR penalty provision, Section 5322(b), with each

1 FBAR violation count. The government urges that the penalty provision lays venue for the  
2 FBAR counts. Section 5322(b) enhances penalties for FBAR violations when the defendant  
3 violated “another law of the United States” or engaged in a “pattern of illegal activity involving  
4 more than \$100,000 in a 12-month period.” 31 U.S.C. § 5322(b). The government argues that it  
5 will prove a “pattern,” which included Brockman’s conspiracy and tax evasion. Since the  
6 conspiracy and tax evasion occurred locally, the government claims, venue is supposedly proper  
7 in this district for all counts of FBAR violations. The government analogizes to *United States v.*  
8 *Rodriguez-Moreno*, 526 U.S. 275 (1999), which held that a kidnapping with use of a firearm  
9 could be prosecuted wherever the kidnapping took place. This kidnapping had traversed several  
10 districts, but the gun never entered the district where trial eventually occurred. The decision held  
11 that the gun was a “circumstantial” element, and its location did not necessarily determine venue.  
12 In contrast, kidnapping was the “essential conduct element[]” and its locations did lay venue. *Id.*  
13 at 280.

14 Similarly, *United States v. Magassouba*, 619 F.3d 202 (2d Cir. 2010), applied *Rodriguez-*  
15 *Moreno* and held that when identity theft occurred “during and in relation to” a predicate crime  
16 of bank fraud, the location of the bank fraud laid venue. *Id.* at 205–06. It reasoned that predicate  
17 bank fraud was “an essential element” of aggravated identity theft. *Rodriguez-Moreno* and  
18 *Magassouba*, however, miss the mark: the failure to file an FBAR is the primary conduct and  
19 would seem to be our “essential conduct element.”

20 In short, the law on venue for the FBAR counts seems to favor the defense. This order  
21 need not make a definitive ruling, however, because, as discussed below, convenience and the  
22 interests of justice favor transfer of all counts. The doubtfulness of venue for the FBAR counts  
23 will have a supporting role in the tenth *Platt* factor, discussed below, since it would waste  
24 resources to find venue here and proceed through trial, only to likely have the FBAR counts  
25 vacated by our court of appeals. The motion to dismiss counts nine through fourteen is **DENIED**  
26 **AS MOOT.**

1           **2. RULE 21(b).**

2 Brockman moves to transfer the entire criminal matter to the Southern District of Texas  
3 “for the convenience of the parties and witnesses and in the interest of justice” under Rule 21(b).  
4 Factors to balance in deciding such a motion by a defendant are: (1) location of the defendant;  
5 (2) location of possible witnesses; (3) location of events likely to be in issue; (4) location of  
6 documents and records likely to be involved; (5) disruption of defendant’s business unless the  
7 case is transferred; (6) expense to the parties; (7) location of counsel; (8) relative accessibility of  
8 the place of trial; and (9) docket conditions in each district involved. *See Platt v. Minn. Min. &*  
9 *Mfg. Co.*, 376 U.S. 240, 243–44 (1964). These factors have been applied to trials of individuals  
10 and corporations. *See, e.g., United States v. Testa*, 548 F.2d 847, 856–57 (9th Cir. 1977). Our  
11 court of appeals has held that a defendant must make a sufficient showing that convenience or  
12 the interests of justice warrant a change of venue under Rule 21(b). *See Wagner v. United*  
13 *States*, 416 F.2d 558, 562 (9th Cir. 1969). Trial courts undertaking the analysis, however,  
14 receive wide latitude and will not be overturned unless the results “clearly indicate an abuse of  
15 discretion.” *Id.* at 564. Brockman urges that the Rule 21(b) factors favor transfer. For its part,  
16 the government opposes transfer and asserts that the *Platt* factors militate in favor of our district.  
17 It does not, however, assert that the law requires deference to its choice of district.

18           *First* (location of the defendant), Brockman lives in Houston. Specifically, he lives 7.4  
19 miles from the United States District Court for the Southern District of Texas. By contrast, he  
20 lives 1900 miles from here. The government concedes that in 2019 Brockman resided “more in  
21 Houston than anywhere else,” but argues that he peregrinated around the globe. The year is now  
22 2021 and travel patterns have radically changed due to the COVID-19 pandemic. More  
23 importantly, Brockman *does* reside in Houston and this *Platt* factor focuses on just that:  
24 residence. It favors transfer (Ind. ¶ 1, Keneally Decl. Exh. A, Opp. at 7).

25           *Second* (location of possible witnesses), the trial witnesses residing closer to this district  
26 outnumber, but only slightly, those residing closer to Houston. The government has identified  
27 three to five local trial witnesses, including at least one witness from each of the two  
28 (unspecified) local “victim entities,” against whom Brockman allegedly committed wire fraud.

United States District Court  
Northern District of California

1       Although the government could not confirm that the two employees still reside in the district, it  
2 asserted at the hearing that as of late 2019, prosecutors at least met with them locally. The  
3 government will also call one to three “fact[] witnesses” from Vista’s local office (Ind. ¶¶ 161–  
4 189, 191(a), Opp. at 8, 3, Ind. ¶ 39).

5       With respect to witnesses proximate to Houston, the government confirmed at the hearing  
6 that “Individual Two” refers to Robert Smith. He lives in Austin, Texas, has entered a non-  
7 prosecution agreement with the government, and features prominently in the indictment. The  
8 government also agreed at the hearing that “Individual Three,” relevant to the accusations that  
9 Brockman altered or destroyed evidence, lives in Oxford, Mississippi. The government  
10 identified “Individual One” in the indictment as Evatt Tamine; parties agree that he currently  
11 resides abroad. Tamine, who the government stated at the hearing is now living in the United  
12 Kingdom, lies beyond the subpoena power of the Court but if a deposition of him were taken  
13 there, it would be inconvenient to both venues under consideration. Both the Austin- and  
14 Mississippi-based witnesses reside far closer to Houston than San Francisco and will have  
15 starring roles at trial if the indictment is true (Ind. ¶¶ 8–13, 31, 32, 34–36, 39, 46–54, 56–58, 61–  
16 80, 82–127, 165, 166, 172–185, 195, 196).

17       Brockman’s counsel also declares, without further explanation, that “at least 17” subpoenas  
18 “have been presented to” parties local to Houston. We have no information as to their roles or  
19 whether they will be called at trial, so this order will ignore them. Brockman’s tax preparer  
20 resides in Houston and very likely will be a witness at trial (Keneally Decl. ¶¶ 29, 22–24, Exh. H  
21 at 7, ¶¶ 19, 35–36).

22       Brockman has, moreover, moved for a competency hearing and his counsel name Southern  
23 District of Texas-based witnesses (four doctors, Brockman’s wife, and an unspecified number of  
24 friends and colleagues) who will participate in a potentially dispositive pretrial hearing; they  
25 feature less in the central question of the trial but deserve at least some consideration for their  
26 stated roles in testifying about Brockman’s changed cognitive function and, thus, in the  
27 important pretrial issue of competency (Keneally Decl. ¶¶ 5–16, Dkt. 64, Pool Decl. ¶ 8).

1       All told, the tally of trial witnesses favors, just barely, the Northern District of California  
2 by a count of three (possibly as many as five) to three. The possibility of more numerous local  
3 witnesses does not dramatically tip the scale against transfer, especially keeping in mind that the  
4 two of the three witnesses for whom Houston is more convenient are called out as important in  
5 the indictment itself. Factoring in, to a lesser extent, the convenience of the Houston-based  
6 competency witnesses, the location-of-witnesses factor appears evenly split between the two  
7 districts.

8       *Third* (location of events likely to be at issue), the events of this case occurred in Texas,  
9 Colorado, Northern California, and abroad. Per the indictment, Brockman conspired to defraud  
10 the United States in the district “and elsewhere” between 1999 and 2019, but the most significant  
11 local events occurred at the beginning of the scheme, in approximately 2000, around the time of  
12 Vista’s founding. At that time, it maintained its principal place of business in San Francisco and  
13 Individual Two resided in the district as well. Brockman’s actions locally included investing in  
14 Vista’s very first fund; in fact, he, alone, invested. He also allegedly worked with Vista  
15 throughout the early 2000s. In 2011 however, Vista opened offices elsewhere, including in  
16 Austin, Texas. At some point, Individual Two also relocated to Texas (a fact that the  
17 government acknowledged at oral argument). The indictment alleges that over the next two  
18 decades, Vista worked at Brockman’s behest, but does not name the locations of individuals at  
19 Vista who, after the company’s 2011 expansion, acted on Brockman’s behalf. Vista’s purported  
20 work for Brockman, meanwhile, certainly implicated locations abroad: Vista invested  
21 Brockman’s money in funds organized solely abroad and transferred his pre-tax capital gains to  
22 offshore accounts, among other places. Other nominees, on Brockman’s behalf, made further  
23 international investments, bought real property and even a yacht abroad, all purportedly to help  
24 him avoid paying taxes on those earnings (Ind. ¶¶ 29, 6–8, 42, 14, 15, 39, 89, 91).

25       The counts most explicitly tied to this district allege wire fraud, which involved emails and  
26 wire transmissions to local individuals and companies as well as an unnamed local investor and  
27 two local “entities.” The emails to individuals in the district dated March 2009 through April  
28 2010 and the scheme involved six false statements to various debt-securities holders including

1       “ones in” this district. The alleged fraud consisted of Brockman’s purchase of debt securities  
2       owed by his own software corporation: Brockman first sought to purchase debt securities from  
3       the debt administrator, Deutsche Bank, using a proxy (a nominee individual) to disguise his role.  
4       Deutsche Bank then acquired the debt securities from local “victim entities” and an investor in  
5       order to sell them to Brockman. Brockman finally purchased the debt securities through his  
6       proxy. He never revealed his role. This deceit, the government explained at the hearing,  
7       materially misled the victim entities because, had they known about Brockman’s involvement,  
8       they would have viewed his offer as that of an officer of the debtor corporation and as a signal  
9       that the debtor corporation could have continued to make payments. Lacking that information,  
10      the victim entities supposedly underpriced the debt securities (Ind. ¶¶ 19, 189, 178, 179, 186,  
11      11).

12       The events in the indictment also include two San Francisco-based financial transfers:  
13       Brockman directed one transfer of over \$14 million of his Vista investment gains from a San  
14       Francisco bank to a Caribbean bank, and another, of more than \$41 million, from a bank in San  
15       Francisco to one in Switzerland. The final connection to the district appears in the last counts of  
16       the indictment, which allege, vaguely, that Brockman interfered with evidence “[i]n” the district  
17       “and elsewhere.” The transfers that the indictment identifies as being from or to this district,  
18       however, represent just a few out of a nearly two-decade period of active investments. It is true  
19       that the indictment names our district fifty-one times and San Francisco twice (in addition), but it  
20       also uses the phrase “and elsewhere” to refer to events’ locations twenty-two times. Brockman  
21       indeed maintained out-of-state residences and it remains far from clear that any of Vista’s actual  
22       work on his behalf “occurred” in its local office after 2011. Given the considerable doubt that  
23       remains about the locations of many events in the indictment, the location-of-events *Platt* factor  
24       either favors neither district or favors this district slightly (Ind. ¶¶ 191, 192, Keneally Decl.  
25       ¶ 35).

26       *Fourth* (the location of documents and records likely to be involved), this factor favors  
27       neither district. Brockman argues that records sit where the events happened, and claims that  
28       most events occurred either in the Southern District of Texas, where he maintained a residence,

1 or abroad. Via the grand jury and the IRS, the government already has the documents it needs.  
2 The defense will probably rely on its own records. The need to subpoena third-party records  
3 appears minimal and to the extent anyone needs to do so, those records will very likely be in  
4 electronic form and transportable to either district. This factor favors neither district.

5 *Fifth* (disruption of business), both sides agree that Brockman has retired. Trial will not  
6 disrupt his “business.” Brockman argues that his health now is his “business” and that this *Platt*  
7 factor favors transfer. Not so. This order evaluates Brockman’s health below, under the “special  
8 elements” factor (number ten). *See, e.g., United States v. Bowdoin*, 770 F. Supp. 2d 133, 139  
9 (D.D.C. 2011) (analyzing the physical health of a defendant’s wife under the “special elements”  
10 factor). This factor does not favor either district.

11 *Sixth* (expense to the parties), the government argues that transferring a fraction of the  
12 counts (the FBAR counts) would be extraordinarily expensive. The government does not claim,  
13 however, that prosecuting the whole case in the Southern District of Texas would cost more than  
14 prosecution here. Brockman argues that trial will be less expensive if held closer to the events in  
15 the case and, therefore, that this factor is either neutral or favors transfer. To repeat, the  
16 locations of many events in the case remain unclear. The expense factor is a draw.

17 *Seventh* (location of counsel), Brockman admits that this factor favors neither district and  
18 that his attorneys reside in both this district and the Southern District of Texas, as well as in New  
19 York and Washington, D.C. The government states that while one local AUSA is working the  
20 case, three of the four attorneys on the case come from the Tax Division in Washington, D.C.  
21 Since each side has at least one attorney living in our district, and other attorneys residing  
22 elsewhere, the location of counsel factor is also a draw (Opp. at 11).

23 *Eighth* (accessibility of the location of trial), both Houston and San Francisco constitute  
24 major metropolitan areas. This factor remains neutral.

25 *Ninth* (docket conditions), the median time from case filing to disposition in felony cases  
26 took 12.4 months in this district compared with 4.2 months in the Southern District of Texas.  
27 *See Federal Management Statistics, Administrative Office of the Courts*, [https://www.uscourts.gov/sites/default/files/data\\_tables/fcms\\_na\\_distprofile0930.2020.pdf](https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0930.2020.pdf) (last visited Jan.  
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1       4, 2021). Although delays in trials everywhere hinge on the COVID-19 pandemic, our district  
2 has suspended all in-person proceedings for the time being due to the rate of COVID-19  
3 transmission and the critical dearth of ICU capacity. The Southern District of Texas has also  
4 suspended jury trials, but as of early January, intended to resume them on January 19, 2021. *See*  
5 CoronaVirus Disease 2019 (COVID-19) – SDTX Related Orders and Courthouse Statuses (last  
6 updated Dec. 17, 2020), <https://www.txs.uscourts.gov/>. And, the Southern District of Texas does  
7 currently show substantially less docketing delay. The government argues that transfer itself will  
8 slow the case’s progression and offset the benefits of a faster docket, citing *United States v.*  
9 *Larsen*, No. 13 CR 688 JMF, 2014 WL 177411, at \*3 (S.D.N.Y. Jan. 16, 2014) (transfer  
10 unwarranted after accounting for the time necessary to execute transfer). That felony cases  
11 progress in the Southern District of Texas at nearly three times the rate here, however, renders its  
12 argument less potent. The government also argues that Brockman has not requested an earlier  
13 trial date than this district can accommodate. This factor does not turn on the defendant’s  
14 request but on the relative conditions of the dockets. As circumstances now stand, the docket-  
15 conditions factor favors transfer.

16       *Tenth* (special elements and interests of justice), Brockman will turn 80 during this case.  
17 His cognitive ability, memory, and mobility have declined, due to what his doctors believe is  
18 either Parkinson’s disease, Parkinsonism, Lewy body dementia, or “some combination” of all  
19 three. Counsel for Brockman offered the government the chance to interview Brockman’s  
20 doctors prior to the indictment to understand his health for themselves. The government spurned  
21 the offer during the months in which it remained open. Now, the government seeks to try him  
22 thousands of miles from home. In support of his motion to transfer, Brockman offers his  
23 physician’s opinion. Dr. James L. Pool opines that facing trial in a district other than Houston  
24 would disorient Brockman “in a manner that could accelerate the deterioration of his mental  
25 condition.” By way of explanation, he declares that Brockman experiences “progressive  
26 dementia,” as well as short- and long-term memory loss. (Dr. Pool also opines that a trial far  
27 from home threatens “creating a risk to his existing cardiac condition” but does not elaborate on  
28 how or on the nature of the cardiac condition.) Dr. Pool declares that it is “not medically

1       advisable” for Brockman to travel to San Francisco due to his advanced age and elevated risk of  
2       serious illness from the novel coronavirus (Pool Decl. ¶¶ 5, 7–9, 10).

3       The Rule 21(b) analysis must also examine two additional elements under the  
4       special-elements *Platt* factor: *first*, Rule 21(b) requires the court to consider victims’ locations.  
5       See FRCrP 21, Advisory Committee Notes. Two victims, both corporations, operate in our  
6       district (and elsewhere).

7       *Second*, in a Rule 21(b) analysis, courts may also transfer a criminal action if the “interests  
8       of justice” so demand. FRCrP 21(b). The United States Department of Justice recommendations  
9       inform our assessment of the “interests of justice.”

10      It is the policy of the Department of Justice generally to attempt to  
11     establish venue for a criminal tax prosecution in the judicial district  
12     of the taxpayer’s residence or principal place of business, because  
13     prosecution in that judicial district usually has the most significant  
14     deterrent effect.

15      *United States Department of Justice, Criminal Tax Manual*, 6.01[2] Policy Considerations. This  
16     DOJ policy statement delineates an important interest. Houston is clearly the proper location for  
17     this case under DOJ policy. Additionally, the stronger view of mandatory venue for the FBAR  
18     counts favors the defense. It would better serve the interests of justice to keep the case together  
19     than to sever and transfer those counts. It would similarly defeat the ends of justice to try the  
20     whole case here only to have our court of appeals vacate those counts for a retrial. For the  
21     reasons stated above, such a reversal would be a realistic scenario should the case remain here.  
22     Given Brockman’s age and questionable health, we do not have the luxury to try this case  
23     twice. In the interests of justice, it should be tried where venue is unquestionably proper and that  
24     is the place of his residence. The government also argues that rates of COVID-19 infection  
25     appeared worse in the Houston area than in San Francisco at the time it filed its opposition and  
26     that, therefore, the interests of justice favor trial here. The data are highly changeable and so do  
27     not sway the special-elements factor. Brockman’s health, the public interest in deterrence, and  
28     the interest in a singular prosecution outweigh the location of victims in this tenth *Platt* factor.  
This factor clearly favors transfer.

In summary, three *Platt* factors weigh in favor of transfer (location of defendant, docket crowding, and the special factor of Brockman's illness and interests of justice). One factor militates against transfer (disruption). The location-of-events factor possibly favors this district but, if so, only slightly. Five other factors appear neutral (location of witnesses, location of documents, location of counsel, accessibility of the court, and expense). The *Platt* factors favor transfer. The Rule 21(b) motion is **GRANTED**.

## CONCLUSION

The Clerk shall transfer this criminal action to the United States District Court for the Southern District of Texas.

## **IT IS SO ORDERED.**

Dated: January 4, 2021.

Wm. Alsup